

Chief Judge Lasnik

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

RICHARD ALLEN FABEL,
RODNEY ROLLNESS,
JOSHUA BINDER,
RICKY JENKS, and,
PAUL FOSTER,

Defendants.

NO. CRO6-0041RSL

ORDER CONTINUING TRIAL DATE

ORDER

The Court having reviewed the records and files herein and considered the stipulation of the parties, enters the following order:

1. The charges which include RICO, 18 USC § 1962, VICAR, 18 USC §, 1959, Hobbs Act Attempted Robbery, 18 USC 1951, Witness tampering, 18 USC 1512, and the trafficking in stolen motorcycles, 18 USC §§ 2312, 2313, 2321, allege a complex racketeering enterprise encompassing murder, robbery, extortion, and the trafficking in stolen motorcycles.

2. All of the defendants acknowledge the need for a continuance. Defendants Rodney Rollness, Ricky Jenks, and Paul Foster all request a trial date of January 8, 2007. The defendants Richard Fabel and Joshua Binder request a continuance to a trial date in November 2006.

1 3. The case is the result of a long term multi-jurisdictional investigation and
2 discovery is voluminous. Discovery includes evidence seized from approximately 13
3 locations, numerous reports, documents, and photographs. The government is still
4 providing discovery. The defendants have already had the opportunity to view some of
5 the physical evidence seized, but they have not yet viewed all of the physical evidence
6 available. The discovery also includes evidence compiled in a related investigation into
7 the Hells Angels conducted by the District of Nevada where the defendants Richard Allen
8 Fabel and Ricky Jenks, and numerous other Hells Angels, are charged with one count of
9 Violent Crime in Aid of Racketeering for the murder of a member of the competing
10 motorcycle club known as the Mongols.

11 4. The charges of VICAR- murder is a capital case which carries the potential
12 penalty of death as to defendants Binder and Rollness. The Capital Crimes Unit of the
13 United States Department of Justice is evaluating whether to recommend that the
14 government seek the death penalty against these two defendants. Both defendants have
15 requested until May 26, 2006, to provide mitigation information to the government. The
16 Court anticipates that the majority of the work being done by Rollness and Binder's
17 defense counsel's until May 26, 2006 will be spent preparing these mitigation materials.
18 Therefore, trial preparation for counsel for defendants Rollness and Binder will not begin
19 in earnest until after the death penalty decision is finalized. This further supports the
20 need for a trial continuance in this case.

21 5. Given the complexity of the case, the voluminous nature of discovery, and
22 the issues regarding the death penalty, the Court finds that the ends of justice outweigh
23 the best interest of the public and the defendants in a speedy trial this case since it so
24 complex given the number of defendants and the nature of the prosecution that it would
25 be unreasonable to expect the parties to adequately prepare for pretrial proceedings or the
26 trial itself on the present trial date. *See 18 USC § 3161(h)(8)(B)(ii)*. Failure to grant a
27 continuance based upon the circumstances would result in a miscarriage of justice in that
28 both government and defense counsel would not have adequate time to prepare the matter

1 for trial, and might require that the government make a decision regarding the death
2 penalty without full input from the eligible defendants. The continuance provides each
3 counsel a reasonable amount of time necessary for effective preparation, taking into
4 account the exercise of diligence. *See 18 USC 3161(h)(8)(B)(i).*

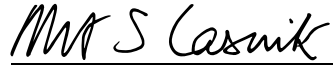
5 6. Under the Speedy Trial Act, when the interest of justice mandates a
6 continuance as to one defendant, a district court may continue the trial date, for a
7 reasonable period of time, as to the joined co-defendants. *18 USC § 3161(h)(7); United*
8 *States v. Messer, 197 F.3d 330, 338 (9th Cir. 1999).* Among the factors to be considered
9 are whether (1) the “sheer length of the delay” is so egregious as to suggest
10 unreasonableness; (2) the delay increases the likelihood of conserving judicial resources
11 via a joint trial; (3) the defendant has moved to sever his trial or otherwise asserted his
12 Speedy Trial rights; (4) the defendant remains in pretrial detention; and (5) the likelihood
13 that the delay will cause actual prejudice. *Messer, 197 F.3d at 337-40.* “In sum, the
14 proper test is whether the totality of the circumstances warrants a conclusion that the
15 delay [is] unreasonable.” *Id.* at 338.

16 7. Here, for the reasons stated in ¶ 5, *infra*, the Court finds that the trial
17 continuance is reasonable as to all defendants. Without rendering a final decision on any
18 severance motions that may be filed, a continuance as to all defendants ensures that the
19 defendants charged with RICO may be tried jointly, thereby effectuating the purposes of
20 § 3161(h)(7) and conserving substantial judicial resources. The continuance to January 8,
21 2007, ensures that the defendants in pretrial detention will be tried within eleven months
22 of their arrests. Further, the delay between the proposed trial date in November 2006,
23 versus January 8, 2007, is not so egregious as to cause prejudice to defendants Richard
24 Fabel and Joshua Binder.

25 IT IS HEREBY ORDERED that the trial date is continued from April 17, 2006
26 to January 8, 2007.
27
28

1 IT IS FURTHER ORDERED that pursuant to Title 18, United States Code,
2 Section 3161(h), the period of time from the date of this order to the new trial date is
3 excluded in the computation of time under the Speedy Trial Act.

4 DONE this 17th day of April, 2006.

5
6 

7 Robert S. Lasnik
8 United States District Judge
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28